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Knox v. State Appellant's Reply Brief 2 Dckt. 44807

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE)	SUPREME COURT NO. 44807
AGENCY'S FINDINGS OF FACT,)	
CONCLUSIONS OR LAW AND)	Nez Perce County No. CV-2015-001673
FINAL ORDER REGARDING SEX)	
OFFENDER REGISTRATION)	
)	
TRAVIS DAVID KNOX,)	
)	
Petitioner-Appellant.)	

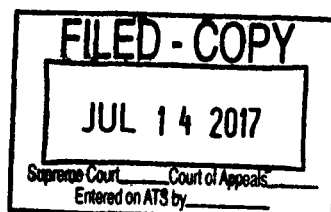
APPELLANT'S REPLY BRIEF

THE HONORABLE JAY P. GASKILL
District Judge

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ARGUMENT IN REPLY

I. INTRODUCTION

Idaho Code Section 18-8304 requires a person who is convicted in another jurisdiction to register as a sex offender in Idaho if the conviction is for a crime that is substantially equivalent to offenses set forth in the statute and if the person enters this state to establish residency. On December 17, 2002, Appellant, Mr. Knox, was convicted in Oregon of one count of Rape in the Third Degree, O.R.S. § 163.355 and one count of Sexual Abuse in the Second Degree, O.R.S. § 163.425. Upon his relocation to Nez Perce County, State of Idaho, Appellant did dutifully register with the State of Idaho. Mr. Knox has fulfilled, and continues to fulfill, the requirement to register as a sex offender in the State of Idaho.

On June 2, 2015, Mr. Knox filed a Petition for Release from Registration Requirements and Expungement of Record. Two months later, on August 5, 2015, the Idaho State Police Bureau of Criminal Identification (hereinafter "Agency") issued an Agency's Finding of Fact, Conclusions of Law and Final Order Regarding Sex Offender Registration. In its Findings of Fact and Conclusions of Law and Final Order, the Agency concluded that the crimes committed by Mr. Knox in Oregon were substantially equivalent to those found in I. C. § 18-1508, Lewd Conduct with a Minor Child under Sixteen. The final section of the Agency determination explained the right to appeal the final order of the agency. This section explained that any party aggrieved by the final order must file an

appeal within twenty-eight days of the service date of the final order. The Certificate of Service indicates the Agency's decision was mailed to the Mr. Knox's home on August 5, 2015.

On September 4, 2015, two days after the twenty-eight day deadline from the date of mailing had passed, Mr. Knox filed a Petition for Judicial Review, pursuant to Idaho Code Section 67-5270(3), of the Agency's August 5, 2015 Final Order where an equivalency determination was made by it and under the legislative grant of authority provided to the Agency under Idaho Code § 18-8304 and Idaho Rule of Administrative Procedure 11.10.03.12, *et seq.* Mr. Knox filed the Petition for Judicial Review on the basis that the Agency's final order was enacted through unlawful procedure and was unreasonable, arbitrary or capricious. In response, the Agency filed a Motion to Dismiss the Petition for Judicial Review on September 17, 2015.

A hearing on the Agency's Motion to Dismiss was held on June 21, 2016. After oral arguments and supplemental briefing submitted by both Mr. Knox and the Agency, this Court rendered its decision on July 22, 2016 and denied the Agency's Motion to Dismiss based upon the Agency's failure to properly effect service of the Final Order to Mr. Knox's counsel as required under Idaho Rule of Administrative Procedure 04.11.01.055.04.

II. MR. KNOX'S PETITION FOR JUDICIAL REVIEW OF THE SEX OFFENDER WAS TIMELY FILED SO AS TO PRESERVE SUBJECT MATTER JURISDICTION OF THIS COURT BECAUSE THE IDAHO SEX OFFENDER REGISTRY FAILED TO SERVE ITS FINAL ORDER ON MR. KNOX'S COUNSEL.

The Agency's Final Order was not properly served on Mr. Knox's counsel. In fact, it wasn't served to Mr. Knox's counsel at all. As such, counsel could not file a response to the Agency's final

order before the expiration of the motion to reconsider timing. On August 5, 2015, the Idaho Central Sex Offender Registry issued a Final Order that made an equivalency determination under IDAPA

11.10.03.12. It was mailed to Mr. Knox's residence. Under Idaho Code 67-5273(2),

"A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under section 67-5271(2), Idaho Code, must be filed within twenty-eight (28) days of the service date of the final order, the date when the preliminary order became final, or the service date of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within twenty-eight (28) days after the service date of the decision thereon.

Id.

Furthermore, IDAPA 04.11.01.055 sets for the rules the agency must follow for service. The rule allows the agency to serve documents by regular mail to the party's last known mailing address.

However, the rule also requires service must be made on the representatives of each party.

"The officer designated by the agency to serve documents in a proceeding ***must serve all orders and notices in a proceeding on the representatives of each party designated*** pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency."

IDAPA 04.11.01.055.04 (emphasis added).

In reply to Respondent's brief, it is Mr. Knox's argument that service was not properly completed because the Agency failed to serve Mr. Knox's counsel as required under IDAPA 04.11.01.055.04. The Agency knew Mr. Knox had representation. During the June 21, 2016 oral arguments on the Agency's Motion to Dismiss, Respondent's counsel stated that the event that

triggered a review by the equivalency board was the service of Mr. Knox's original Petition for Relief from the registration requirement (filed on June 2, 2015 in Nez Perce County Case Number CV15-0001010) to the Central Registry. That Petition was served by Mr. Knox's counsel and identified Clark and Feeney, LLP as counsel for Mr. Knox. There is nothing in the record which indicates the Final Order was served on Mr. Knox's counsel. It is clear it was only mailed directly to Mr. Knox. As such, where service was not made on Mr. Knox's representative, the twenty-eight day time period did not run, and thus, both the district court and the appellate court has jurisdiction to hear this matter.

III. RESPONDENT IS NOT ENTITLED TO ATTORNEYS FEES

Mr. Knox did not pursue this appeal without a reasonable basis in fact or law to do so. With regard to the issues presented by Respondent in its opening brief, Mr. Knox did not present those as his issues on appeal and in fact received a favorable ruling from the district court with regard to subject matter jurisdiction. With regard to Mr. Knox's issues on appeal, Respondent unreasonably argues that there is no reasonable basis in fact or law for Mr. Knox to appeal the district court's ruling. However, as outlined in Mr. Knox's opening brief, there exists a number of factual and legal considerations that support the non-frivolous nature of this appeal. As such, Mr. Knox requests that this court deny Respondent's request for attorneys fees on appeal.

IV. THE CASE LAW CITED BY RESPONDENT INVOLVES INSTATE CONVICTIONS AND ARE NOT APPLICABLE TO THE CASE AT BAR WHICH INVOLVES AN OUT OF STATE CONVICTION.

With respect to the equivalency determination made by the Agency under the legislative grant of authority provided to it under Idaho Code §18-8304(1)(b) and Idaho Rule of Administrative Procedure 11.10.03.12 *et seq.*, it is Mr. Knox's primary argument that the Agency's final order was enacted through unlawful procedure and was unreasonable, arbitrary or capricious. Specifically, that an equivalency determination was made with respect to the petitioner's Oregon offenses immediately upon the notification of petitioner's relocation to Nez Perce County, State of Idaho, in 2003, and that the SOR cannot now come back with a redetermination following notification of an offender's petition for relief of the registration requirement.

In response to the case law cited by the SOR, Mr. Knox would simply point out that in each instance, the cases involve registrants whose offenses and convictions within the State of Idaho where Idaho had, and at all times retained jurisdiction. Here, this is a matter of an equivalency determination being made by the State of Idaho with regard to a conviction in a different jurisdiction, yet upon relocation to the State of Idaho, triggered notification and registration under Idaho Code 18-8304(1)(b).

The relocation case cited by the SOR is *State v. Yeoman*, 149 Idaho 505, 236 P.3d 1265 (2010), is factually and procedurally distinguishable from this case. First, the defendant in *Yeoman* was convicted of a sexual offense outside of Idaho in 1984 and moved to Idaho in 2007. However,

upon his move to Idaho in 2007, he failed to register as a sex offender under Idaho Code 18-8304(1)(b), and was charged with a crime for this failure. Mr. Yeoman's argument is not that the equivalency determination should have been made using the 2007, or 1984 definitions of aggravated offense, as is petitioner's argument here, but rather Mr. Yeoman argues that he shouldn't have to register under Idaho Code 18-8304(1)(b) at all because his crime occurred prior to June 1, 1993. This is not Mr. Knox's argument, and under Mr. Knox's argument, Mr. Yeoman's equivalency determination would have been made using the 2007 definitions because that was controlling at the time he moved and availed himself to the jurisdiction of Idaho. Like here, where the 2003 equivalency determination was made using the laws applicable and controlling at the time Mr. Knox moved to Nez Perce County and availed himself to the laws of the State of Idaho.

In *Groves v State*, 156 Idaho 552 (Idaho App. 2014), the petitioner was adjudicated and convicted under the laws of the State of Idaho, and under the due process of his trial, he was afforded the opportunity to make arguments against the aggravated offense determination. In this case, as Mr. Knox was adjudicated outside the jurisdiction of Idaho, and he should be afforded the due process protections of an agency action under the Idaho Administrative Procedures Act.

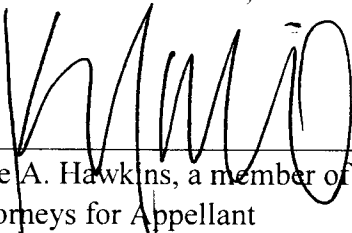
An equivalency determination was made in 2003 when Mr. Knox first moved to Idaho. That determination was reflected on Mr. Knox's registration information. It was only after Mr. Knox filed a petition for relief from the duty to register that the Board held a hearing and made a new determination, without any notification or opportunity for Mr. Knox to be heard.

CONCLUSION

For the reasons stated herein, Petitioner-Appellant Travis Knox, respectfully requests that this Court reverse the findings of the Hearing Officer and remand the matter back to the State with instructions to vacate the new equivalency determination of Mr. Knox' Oregon Convictions and reinstate the original equivalency determination made in 2003.

DATED this 12th day of July, 2017.

CLARK and FEENEY, LLP

By 

Kate A. Hawkins, a member of the firm.
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2017, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Cheryl Rambo Deputy Attorney General Idaho State Police 700 S. Stratford Drive Meridian, ID 83642 cheryl.rambo@isp.idaho.gov	<input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
---	---

By: _____

Attorney for Appellant